

Message Text

CONFIDENTIAL

PAGE 01 GEORGE 01745 01 OF 02 290328Z

62

ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /031 W

----- 060878

O 280159Z SEP 74

FM AMEMBASSY GEORGETOWN

TO SECSTATE WASHDC NIACT IMMEDIATE 367

C O N F I D E N T I A L SECTION 1 OF 2 GEORGETOWN 1745

EXDIS

E.O. 11652: GDS

TAGS: EINV, EMIN, GY

SUBJECT: BAUXITE LEVY AND REYNOLDS NATIONALIZATION

REF: STATE 21458#

SUMMARY: IN TWO-HOUR SESSION AFTERNOON SEPTEMBER 28, IN RELAXED AND AMIABLE ATMOSPHERE, AMBASSADOR CONVEYED TO PM BURNHAM POINTS OUTLINED REFTEL. BURNHAM DECLINED TO ACCEPT RELATIONSHIP BETWEEN LEVY AND NATIONALIZATION, STATED GOG PREPARED NEGOTIATE TERMS OF COMPENSATION, AND SAID HE HAD NO RPT NO INTENTION INVOKING PERSONAL SANCTIONS AGAINST REYNOLDS PERSONNEL. ON ARBITRATION, HE SAID UNDER NO CIRCUMSTANCES WOULD GOG AGREE TO SUBMIT TAX ISSUE TO ARBITRATION AND ON COMPENSATION WOULD ONLY CONSIDER UNDER 1965 INVESTMENT GUARANTEE AGREEMENT. IF REYNOLDS FAILS PAY TAX, BURNHAM SAID GOG WILL TAKE PHYSICAL CONTROL OF INSTALLATIONS AND PROHIBIT EXPORT OF PRODUCT BY REYNOLDS, AS PROVIDED IN LAW. HE ALSO CITED PROVISION OF LAW WHICH AUTHORIZES GOG TO SELL PROPERTY WITHOUT COURT ORDER UNDER DUTCH PROCEDURE (PARATE EXECUTION). BURNHAM PROFESSED SEE NO RPT NO REASON WHY THIS DISPUTE SHOULD AFFECT BILATERAL RELATIONS, THOUGH HE RECOGNIZED PROBABLY CUT-OFF OF ASSISTANCE, VETO OF IFIS LOANS, ETC. HE CLAIMED IBRD ALREADY TIGHTENING UP, E.G. ON CONDITIONS FOR ELECTRIC POWER LOAN. AT END, HE ASKED FOR NOTE VERBALE SUMMARIZING POINTS CONVEYED ORALLY. END SUMMARY.

1. PM BURNHAM RECEIVED ME AT COUNTRY RESIDENCE AT 1530 SEPTEMBER
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PAGE 02 GEORGE 01745 01 OF 02 290328Z

28. DURING FRANK AND WIDE-RANGING TWO-HOUR CONVERSATION, HE

WAS THOROUGHLY RELAXED AND MAMIAABLE, BETRAYING ALMOST NONE OF TENSION EVIDENT IN OUR LAST TWO TALKS. HE PULLED NO PUNCHES, BUT HIS TONE WAS CALM AND PATIENT THROUGHOUT, WITH OCCASIONAL SPARKS OF HUMOR.

2. I BEGAN BY SPEAKING FROM REFTTEL, COVERING POINTS PRACTICALLY VERBATIM IN INTEREST OF CLARITY. HE RESPONDED INITIALLY TO MATTER OF PERSONAL H NCTIONS,#SAYING TEXT TAKEN BODILY FROM JAMAICAN

LAW AND ASKING IF WE HAD PROTESTED TO GOJ. I SAID I COULDN'T ANSWER, BUT NOTED CIRCUMSTANCES DIFFERENT, SINCE GOJ NOT CALLING FOR IMMEDIATE NATIONALIZATION. BURNHAM SAID FOR PRESENT GOG HAD NO RPT NO INTENTION OF INVOKING ARREST PROVISION AGAINST ANY REYNOLDS PERSONNEL. ONLY IN CASE OF "UTMOST CONTUMACY" ON PART OF REYNOLDS WOULD HE CONSIDER INVOKING THIS POWER, SINCE GOG HAD OTHER ADEQUATE POWERS TO COLLECT TAX.

3. TURNING TO LINKAGE BETWEEN LEVY AND NATIONALIZATION BURNHAM SAID HE COULD NOT ACCEPT USG POSITION. TAXATION IS SOVEREIGN RIGHT AND BAUXITE LEVY IS BOTH MORALLY AND LEGALLY UNASSAILABLE. I SAID OUR REFERENCE TO "UNILATERAL" IMPOSITION OF TAX BASED ON GOG 1965 AGREEMENT WITH REYNOLDS, AND RICE LETTER, WHICH PROVIDED BASIS FOR NEGOTIATION, RATHER THAN IMPOSITION, OF REVISED TAX FORMULA. BURNHJV SAID HE OVERRODE CABINET TO INSIST ON ATTEMPT TO NEGOTIATE NEW TAX FORMULA WIIVH REYNOLDS, BUT WHEN TALKS FAILED BRIDGE WIDE DIFFERENCE HE FELT OBLIGED PROCEED WITH LEGISLATION. EVEN SO, GOG CONCEDEDON CALCINED AND CHEMICAL EX- CLUSION. FACT THAT PROFITS ESCALATED IN 1974 MADE TAX IM- PERATIVE POLITICALLY, BUT WAS PURELY ADVENTITIOUS FROM STAND- POINT OF NATIONALIZATION.

4. BURNHAM THEN REVIEWED WELL-WORN GROUND OF NEGOTIATIONS WITH REYNOLDS ON PARTICIPATION, REMARKING THAT, UNLIKE ALCAN, REYNOLDS EXECUTIVES NEVER REALLY GOT DOWN TO BRASS TACKS IN TALKS WITH GOG. THEY WERE ALWAYS PLEASANT BUT ENIGMATIC. ONLY HIS "FRIEND" ARTHUR GOLDBERG SEEMED READY TO TALK FRANKLY. I

OBSERVED THAT CONDITIONS FOR ALUMINUM INDUSTRY CHANGED SUBSTAN- Tially AFTER 1971, AND MORE PARTICULARLY REYNOLDS' STAKE IN GUYANA WAS MUCH SMALLER THAN ALCAN'S, SO THAT REYNOLDS WAS CONFIDENTIAL

CONFIDENTIAL

PAGE 03 GEORGE 01745 01 OF 02 290328Z

CONSTANTLY "LOOKICB OVER ITS SHOULDER" AT WHETHER ACTIONS IN GUYANA MIGHT SET PRECEDENTS FOR THEIR MORE IMPORTANT STAKES ELSEWHERE. THIS ACCOUNTED FOR THEIR RELUCTANCE IN MOST RECENT TALKS TO DO ANYTHING WHICH WOULD GIVE IMPRESSION THEY WERE VOLUNTARILY NE- GOTIATINGNATIONALIZATION. AT SAME TIME, THEY TRIED TO INDICATE WHAT STEPS BY GOG WOULD ACT AS "TRIGGER" TO ENABLE THEM TO ENTER NEGOTIATION ON COMPENSATION AND HAD TRIED TO SHOW GOOD FAITH BY ACTUALLY TABLING A COMPENSATION FORMULA A A STARTER. I HAD

DISCUSSED THIS POINT WITH MINMINES JACK AND THOUGHT HE UNDERSTOOD THE DEGREE OF FLEXIBILITY IN REYNOLDS POSITION. BURNHAM SAID THE TROUBLE WAS REYNOLDS FAILED TO COMMUNICATE; THEIR LETTER TO JACK ON NATIONALIZATION WAS MASTERPIECE OF LEGAL JARGON WHICH SAID NOTHING. STILL, HE SAID, GOG WOULD WELCOME FURTHER NEGOTIATIONS ON COMPENSATION- TOMORROW IF REYNOLDS READY.

5. I ASKED BURNHAM'S REACTION TO OUR SUGGESTION OF ARBITRATION. HE SAID GOG, LIKE JAMAICA, WOULD UNDER NO CIRCUMSTANCES AGREE TO ARBITRATION ON TAX QUESTION. NOR WOULD IT SUBMIT NATIONALIZATION /COMPENSATION DISPUTE WITH REYNOLDS TO ARBITRATION. HOWEVER, GOG WOULD BE PREPARED TO CONSIDER RECOURSE TO ARBITRATION IN EVENT USG BECOMES SUBROGATED TO REYNOLDS' RIGHTS, UNDER TERMS OF AUGUST 1965 AGREEMENT.

6. BURNHAM ASKED M IF REYNOLDS WOULD PAY TAP. I SAID I HONESTLY DID NOT KNOW, BUT ASKED HIM TO LOOK AT IT FROM COMPANY'S POINT OF VIEW. THEY HAVE ALREADY PAID US DOLS 3 MILLION IN DISPUTED BACK TAXES, AND HAVE HEARD FREQUENT INTIMATIONS THAT GOG ESTIMATES PRESENT VALUE OF INVESTMENT AT AROUND US DOLS 8 MILLION. THIS GIVES THEM LITTLE INCENTIVE TO PUT UP ANOTHER US DOLS 5.25 MILLION CASH BY OCTOBER 15, WHICH IN TURN

NOTE BY OC/T: #AS RECEIVED.

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PAGE 01 GEORGE 01745 02 OF 02 290329Z

62

ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /031 W

----- 060886

O 280159Z SEP 74

FM AMEMBASSY GEORGETOWN

TO SECSTATE WASHDC NIACT IMMEDIATE 368

C O N F I D E N T I A L SECTION 2 OF 2 GEORGETOWN 1745

EXDIS

E.O. 11652: GDS

TAGS: EINV, EMIN, GY

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REF: STATE 21458

WOULD COMMIT THEM MORALLY TO PAY OUT FINAL DOLS 1.75 MILLION AT END OF 1974. I ALSO DREW HIS ATTENTION TO USG POSITION ON TAX LEVY.

7. PUTTING SHOE ON OTHER FOOT, I ASKED BURNHAM, "ASSUMING WORST, IF REYNOLDS FAILS PAY TAX, WHAT WILL GOG DO?" VERY SIMPLE, HE SAID, WE WILL INVOKE TAX LAW BY TAKING PHYSICAL CONTROL OF PROPERTIES AND PROHIBIT REYNOLDS FROM EXPORTING BAUXITE PRODUCTS. WE ALSO HAVE POWER, HE SAID, TO SELL PROPERTY WITHOUT COURT PROCEEDINGS TO COLLECT VALUE OF TAX. HE SAID THIS PROCEDURE DERIVES FROM DUTCH JURISPRUDENCE, AND IS KNOWN, AND DESCRIBED IN BAUXITE TAXGLAW, AS "PARATE EXECUTION". HE DID NOT, HOWEVER, STATE GOG WOULD INVOKE THIS POWER, BUT WZQT ON TO SAY THAT FAILURE TO PAY TAX WOULD STILL NOT PRECLUDE COMPENSATION NEGOTIATIONS. IN THIS SITUATION, TAX WOULD BE DEDUCTED FROM FINAL SETTLEMENT THOUGH HE NOTED GOG WOULD PREFER TO HAVE TAX PAID..

8. BURNHAM RESURRECTED ALLEGATION THAT REYNOLDS LETTING INSTALLATIONS RUN INTO GROUND, CITING ITEMS OF EQUIPMENT WRITTEN OFF BUT THEN RE-ENTERED ON BOOKS. I SAID THIS PROBABLY EXPLAINED BY WHAT I UNDERSTOOD TO BE EXTENSIVE EFFORT BY REYNOLDS TO SUBSTITUTE IN-COUNTRY REBUILDING OF HEAVY EQUIPMENT FOR PURCHASE OF FACTORY-NEW

CONFIDENTIAL

PAGE 02 GEORGE 01745 02 OF 02 290329Z

ITEMS FROM ABROAD. I ELABORATED ON ADVANTAGES FOR GUYANA OF THIS PROCEDURE AND INVITED HIM TO VERIFY. THIS LED TO DISCUSSION OF COMPENSATION FORMULAS IN WHICH I SUGGESTED HE NOT REGARD REYNOLDS INITIAL FORMULA AND US DOLS 24 MILLION FIGURE AS INFLEXIBLE.

ALSO SAID OPIC WOULD INSIST ON AUDIT AND INSPECTION BEFORE SETTLING ON INSURANCE CLAIM, AND REMINDED BURNHAM OF WHAT HUNT AND I TOLD JACK REGARDING OPIC'S ROLE AS BANKER IN ARRANGING SETTLEMENTS.

9. BURNHAM PROFESSED TO SEE NO REASON WHY REYNOLDS DISPUTE SHOULD CAUSE BILATERAL RELATIONS TO DETERIORATE. GUYANA WILL NOT CHANGE ITS POLITICAL OR MILITARY POSTURE, WILL NOT ALLOW ITS TERRITORY TO BECOME Foothold FOR USSR PENETRATION, ETC. HE SAID HE UNDERSTOOD IT WAS NORMAL EXERCISE OF FRIENDLY DIPLOMACY WHEN WE TOLD HIM IF HE DID "A," CONSEQUENCE WOULD BE THAT US WOULD DO "B," BUT THAT NEEDN'T KEEP US FROM BEING FRIENDLY. THIS GAVE ME OPENING TO TAKE HIM UP ON HIS AND OTHER GOG OFFICIALS' PUBLIC ALLEGATIONS THAT US ALREADY BRINGING PRESSURE ON GUYANA. I SAID THIS WAS UNFAIR, TO WHICH HE REJOINED BY CITING IBRD "TIGHTENING UP" ON JOINT UK-CANADA-IBRD LOAN TO GUYANA ELECTRIC (GEC). HE SAID BEYOND SPECIFICS OF IBRD STAND ON 10 PERCENT RATE OF RETURN, THERE WERE FREQUENT INQUIRIES IN SNIDE TONES BY IBRD REPS REGARDING REYNOLDS CASE AND THE INTRODUCTION OF A TOTALLY NEW "DEBT BURDEN/GNP RATIO" FORMULA WHICH DROPPED GUYANA FROM FORMER

PLACE OF HONOR AMONG LA COUNTRIES TO UNSATISFACTORY LEVEL. HE SAID WHEN ASKED FOR EXPLANATION, IBRD MAN SAID HE WAS ONLY DOING WHAT HE WAS TOLD TO DO". I TOLD BURNHAM IT SEEMED TO ME THIS WAS TYPICAL OF IBRD TOUGH ATTITUDE I HAD SEEN ELSEWHERE AND THOUGH

IT HIGHLY UNLIKELY USG WOULD STOOP TO SUCH PETTIFOGGING ACTION.

10. AS I WAS ABOUT TO LEAVE, I SAID I HAD NOTICED GOG RELEASE IN TODAY'S PRESS SAYING BURNHAM CONSIDERING POSTPONING TRIP TO CHINA AND RUMANIA "IN LIGHT OF URGENT MATTERS REQUIRING HIS ATTENTION." I HOPED REYNOLDS WOULD NOT BE CAUSE FOR DEFERRING HIS TRIP. HE SAID "NOT ALTOGETHER"; MAIN REASON WAS THAT GOVT HAD NOT BEEN ABLE TO REACH AGREEMENT ON 1975 BUDGET YET, AND AS PRIMIN HE HAD TO MAKE SOLOMONIC DECISIONS RESOLVING DIFFERENCES AMONG HIS CABINET MINISTERS.

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PAGE 03 GEORGE 01745 02 OF 02 290329Z

11. ON THE WAY TO CAR, BURNHAM ASKED IF MESSAGE I HAD CONVEYED

WAS "NOTE VERBALE". I SAID THIS WAS TERM FOR INFORMAL, UNSIGNED MEMO SUMMARIZING AN ORAL COMMUNICATION. HE ASKED WHEN HE WOULD GET WRITTEN VERSION AND I SAID I WOULD SEE HE GOT ONE.

12. COMMENT AND ACTION:

A. REQUEST DEPARTMENT REVIEW REFTEL AND ADVISE WHETHER ANY CHANGES DESIRED IN LIGHT OF IT'S BEING DELIVERED IN WRITING. I FORESEE THAT BURNHAM MAY INTEND TO USE IT PUBLICLY IF IT SUITS HIS CONVENIENCE,.

B. I WOULD ALSO LIKE TO KNOW WHAT CAN BE SAID ABOUT ALLEGATIONS REGARDING IBRD.
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Message Attributes

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